

Politics and the workplace—a dangerous combination

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No matter your political leanings, there is one thing about the 2016 presidential election we probably all can agree on—it is by far the most controversial and polarizing election we've seen in a long time, if ever. With news outlets, social media, and the entertainment industry bombarding us with a constant flow of information and opinions, it seems only natural that thoughts and feelings about the upcoming election are on the tips of everyone's tongues. But even if you and your employees have become immersed, voluntarily or otherwise, in the current political drama, that doesn't mean it's advisable or appropriate to allow politics to seep into your workplace.

Free speech—outside of the office

You don't need to be a scholar of the U.S. Constitution to know that the First Amendment guarantees our right to free speech. This freedom applies not only to our actual spoken words but also to things like our clothing, accessories, and actions that express our personal beliefs, values, and opinions.

What you may be surprised to learn is that the First Amendment's protections don't necessarily apply at the workplace. In fact, private-sector employers can limit or even prohibit political discussions by employees while they are "on the clock." That includes enforcing a dress code that bans workers from wearing political buttons, T-shirts, or other accessories. Such a step may prove to be necessary to avoid needless disruption at your workplace in today's politically charged climate, particularly as we get closer to the party conventions and Election Day.

Although political speech is most commonly the very speech we assume the First Amendment is designed to protect, talking politics in the workplace, especially in the current political environment, may lead to discussions that breed claims of discrimination and a hostile work environment. Vocal support for any particular candidate may imply certain beliefs about issues like religion, sexuality, and gender equality, all of which can lay the groundwork for discrimination and hostile work environment claims.

For example, a discussion about Donald Trump's proposal to ban Muslims from entering the United States could easily devolve into discriminatory comments about individuals who

practice Islam or who are from the Middle East. Such comments could be viewed by your Muslim employees as creating a hostile work environment based on their religion or national origin.

Limitations on employers

So if you are a private-sector employer, your employees have no constitutional right to engage in "free speech" in the workplace, but you need to be mindful that there may be state laws limiting what you legally can require of your employees. For example, New Jersey and Oregon prohibit employers from forcing their employees to attend political rallies at the workplace. And California, Colorado, and Louisiana specifically prohibit discrimination against employees based on their political beliefs.

Similarly, a law in Washington, D.C., prohibits discrimination based on employees' political party affiliation. Under Nevada and North Carolina law, employees' off-duty political activities are protected. Virginia has no specific protections for private-sector employees, but the off-duty political activities of certain state and local government employees are protected as long as the activity is performed off-site and out of uniform.

Further still, federal law prohibits employers from forcing or inducing their employees to vote a certain way. Also, employees may not be prohibited from, or punished for, engaging in concerted activity to discuss or address the terms or conditions of their employment. One of the big political issues this year is whether to increase the minimum wage. If your employees are getting together on their lunch break and discussing why their hourly pay should be increased to \$15, as some politicians have advocated, those discussions may well constitute federally protected concerted activity.

Bottom line

There is a place for political discussion in our country, but it shouldn't be the workplace. Accordingly, you may want to consider adopting policies that prohibit political discussions and expression in your workplace, consistent with the applicable state and federal requirements. Because a prohibition targeted solely at politically motivated speech may be difficult to apply in practice, a more fruitful option may be to simply disallow any clothing, accessories, and use of office resources unrelated to work. As with all workplace policies,

make sure you consistently enforce the policy and avoid unequal application of the rules.

Finally, before implementing a policy limiting your employees' "free speech," you would be wise to consult with experienced employment counsel to make sure it conforms with all of the legal obligations you may have. The purpose of such a policy is to ensure that your workplace environment is conducive to getting the work done. You don't want to adopt or implement a policy that creates more problems than it solves or spawns a lawsuit.

Editors note: Further information on how to deal with politics in the workplace can be found in "[Thin line between political and hate speech: what's acceptable at work](#)," which appears on pg. 6 of the November 2015 issue of *Virginia Employment Law Letter*.

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